



STATE BOARD OF EQUALIZATION

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Controller, Sacramento

BURTON W. OLIVER
Executive Director

August 21, 1995

Mr. Brad Sherman

My

Re: [illegible]

Dear Mr. [illegible]:

I am writing in response to your letter of July 28, 1995 addressed to the Honorable Brad Sherman regarding [illegible] potential liability for hazardous waste fees resulting from damage caused by the January, 1994 earthquake in the Northridge area. At issue is whether [illegible] is liable for Hazardous Waste Disposal Fees and Generator Fees on hazardous waste tonnage generated and submitted for disposal as a result of the earthquake. For the reasons set forth below, we conclude that [illegible] is exempt from such fees concerning the abatement of hazardous wastes which directly resulted from the earthquake.

The Hazardous Waste Fees are contained in Chapter 6.5 (commencing with § 25100) of the Health and Safety Code, and are administered by the Board of Equalization (Board) pursuant to Part 22 of Division 2 (commencing with § 43001) of the Revenue and Taxation Code. The Disposal Fee (Health & Saf. Code, §§ 25174.1 and 25174.6) is imposed on each person who disposes of waste, or submits waste for disposal, to land in this state. The fee due is based on the number of tons of waste submitted for disposal. The annual Generator Fee (Health & Saf. Code, § 25205.5) is imposed upon each generator of hazardous waste who generates five or more tons of waste at a site during a calendar year.

In general, a division of the state government, such as [illegible], is subject to the Generator and Disposal Fees in the same manner as any other entity or person. Neither the Health and Safety Code nor the Revenue and Taxation Code provide general exemptions from the fees for wastes resulting from natural disasters, such as earthquakes. Also, neither law allows the Board to grant waivers from the fees.

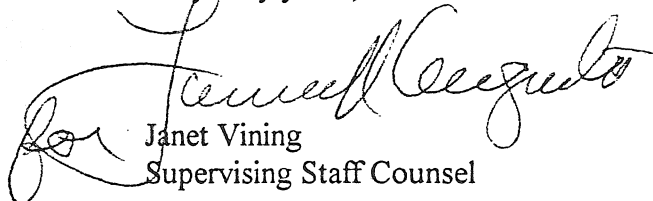
Mr
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However, the law also recognizes that a government agency (local, state or federal) may be required to remedy a release of hazardous wastes caused by a third party in order to protect public health and safety and the environment. Health and Safety Code section 25174.7(a)(1) provides that the Disposal Fee and the Generator Fee do not apply to hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person.

It is our opinion that an act of nature, such as an earthquake, falls within the intent of this exemption. Therefore, we conclude that is entitled to the exemption provided in section 25174.7(a)(1) of the Health and Safety Code for the abatement of wastes which directly resulted from the January, 1994 earthquake remains subject to full Hazardous Waste Fees concerning any hazardous wastes which were not directly caused by the earthquake or which were generated during routine operation and maintenance of the .

These fees are administered by the Board's Environmental Fees Division. If you require any additional information, please feel free to contact me at the above telephone number, or Mr. Stephen Rudd, Administrator of the Environmental Fees Division, at (916) 322-4020.

Very truly yours,


Janet Vining
Supervising Staff Counsel

JV:wk

cc: Honorable Brad Sherman
Mr. Burton W. Oliver
Mr. Allan K. Stuckey
Mr. E. L. Sorensen, Jr.
Mr. Stephen Rudd
Mr. Lawrence Augusta
Mr. Dennis Mahoney, Dept. of Toxic Substances Control